



American Federation of
Government Employees

Memorandum

Step 2 Grievance on behalf of bargaining unit employees who had their telework agreements terminated under Cassandra Heiges

Dated: May 7, 2024

To: Cassandra Heiges, Area Manager, Customer Service Support, Office of Information & Technology (OI&T), Department of Veterans Affairs (VA or Department)

Re: Terminating telework agreements in violation of the parties' collective bargaining agreement and federal law

From: Steve Eckerman, Esq., Steward, American Federation of Government Employees (AFGE), Local 17, AFL-CIO

I. Statement of the grievance

This step 2 grievance¹ involves violations of various provisions of the Master Agreement, the Federal Service Labor-Management Relations Statute (hereinafter “the Statute”), and the Department’s own core values. The violations stem from the Department's unilateral termination of telework for approximately 40 bargaining unit employees during negotiations with the Union, coupled with the absence of prior notice to employees and the threat of repercussions for non-compliance.

¹ The grievance is filed under the provisions of Article 43, Section 7 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2023) (“Master Agreement”).

The affected group operates under the supervision of area manager Cassandra Heiges. On April 17, 2024, Ms. Heiges reached out to Local 17 President Douglas Massey to discuss temporarily altering telework schedules for a “refresh project.” She proposed discontinuing the current telework arrangement of one week in the office and one week at home, starting May 6, 2024, for an estimated duration until September 30, 2024, or until the project’s completion. Ms. Heiges assured that teleworking could be reinstated post-project, albeit with modified schedules to ensure continuous coverage. These modifications were to be temporary until the conclusion of Union negotiations, after which the telework policy could be adjusted accordingly.

The Union promptly filed a Demand to Bargain on April 22, 2024, which included a cease-and-desist order and request for a briefing before submitting proposals. A briefing occurred on April 25th. At no point during the briefing did Ms. Heiges state to the Union that the Department intended to terminate ad hoc telework without fulfilling its notice and bargaining obligations under the Master Agreement and the Statute. In fact, Ms. Heiges appeared receptive to bargaining regarding the frequency of office attendance.

On Friday, May 3rd, the Union was preparing proposals that included requesting office attendance no more than three days a week. However, at 2:20pm, before the Union could submit its proposals, Ms. Heiges notified her group via email that their telework was entirely cancelled and that employees must report to the office on Monday, the following workday, under threat of disciplinary action. The email reads as follows:

On April 18, 2024, the Union informed you of the request I sent them requiring our teams to resume onsite work at the office on May 6, 2024, to support the VA's Tier 2 desktop services Refresh Project. Ample notice was given to allow for necessary adjustments to accommodate your return. Your Position Descriptions (PDs) allow for Ad-Hoc Telework only, not scheduled. You are expected to adhere to your pre-Covid onsite full-time schedule. Starting on May 6, 2024, the Action Item Refresh project will commence.

If you need to request leave during this period, please reach out to your supervisors for assistance.

Failure to report to the office onsite or to request leave properly may result in appropriate action.

The Department's actions violated several provisions of Article 20 of the Master Agreement. First, while acknowledging that employees may temporarily need to report to their official duty station for operational needs, the Department failed to demonstrate, beyond mere assertions, that cancelling telework entirely was a valid operational need that was required to meet the office's mission during the refresh project.² Additionally,

² See Master Agreement, Article 20, Section 9.B.

even assuming a valid operational need had been shown, Ms. Heiges violated the Master Agreement by not providing reasonable advance notice and a reasonable time to report.³ Informing employees of the unilateral cancellation of telework on a Friday afternoon, and requiring immediate office attendance on the next workday, is not reasonable advance notice. Ms. Heiges' claim that the Union's email to employees on April 18th amounts to "ample notice" from management is also absurd and without a legitimate basis. These actions showed a complete disregard for employees, who were given very little time to restructure their domestic lives.

Moreover, the Department's failure to provide adequate notice and its reluctance to engage in meaningful negotiation contradict VA's Core Values of Integrity, Commitment, Advocacy, Respect, and Excellence, encapsulated by the acronym "I-CARE," as outlined in 38 CFR § 0.601. Managers and supervisors are explicitly tasked with treating employees with the utmost respect and dignity to enhance productivity.⁴

Lastly, the Department committed an unfair labor practice under 5 U.S.C. § 7116(a)(1), (5), and (8) by failing to fulfill its bargaining obligation under the Statute. It is imperative under the Statute to consult and negotiate in good faith with a labor organization, which was disregarded in this instance. Moreover, Ms. Heiges bypassed the Union by excluding it from the notice to employees, which mandated their immediate office attendance or risk potential consequences.

II. Statement of the violation

The Union asserts the right to amend this Grievance if violations of any other applicable sections of the contract, laws, or regulations are discovered. By unilaterally terminating telework agreements without a valid operation need and meeting all notice and bargaining obligations, the Department violated, and continues to violate, the following:

- 5 U.S.C. § 7116(a), stating that it shall be an unfair labor practice for an agency to refuse to consult or negotiate in good faith with a labor organization; and which makes it an unfair labor practice to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
- Article 2 of the Master Agreement due to the Department's failure to comply with applicable federal statutes and regulations in the administrative matters covered by the Master Agreement, to include 5 U.S.C. § 7116(a);
- Article 17 of the Master Agreement, stating that managers and supervisors are explicitly tasked with treating employees with the utmost respect and dignity to enhance productivity;
- Master Agreement, Article 20, Section 9, stating that the Department may only require employees to report to the official duty station (ODS) for valid operational needs, and requiring that when this is done the Department must provide employees with "reasonable advance notice" and that they be provided a "reasonable time to report";

³ *Id.*

⁴ Master Agreement, Article 17, Section 1.F.

- 38 CFR § 0.601: VA's Core Values are Integrity, Commitment, Advocacy, Respect, and Excellence. Together, the first letters of the Core Values spell "I CARE";
- The Telework Enhancement Act. PL 111-292 ("the Act") which authorizes federal employees to telework to the maximum extent possible without diminishing agency operations and performance;
- Any other relevant articles, laws, regulations, customs, and past practices not herein specified.

III. Statement of the remedy

The Union asks that, to remedy the above situation, the Department agree to the following:

- Withdraw the notice dated May 3, 2024, which recalled employees from telework, until the Department has fulfilled all obligations outlined in accordance with the Federal Service Labor Relations Statute, 5 U.S.C. § 7101 et seq., and the Master Agreement.
- Issue a notice posting to all bargaining unit employees represented by Local 17 acknowledging its obligations to the Union under the Federal Service Labor-Management Relations Statute.
- Agree to any additional remedies deemed appropriate in addressing this matter.

The time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions regarding this Grievance, please contact the undersigned.

Submitted by,

Steve Eckerman, Esq.

Steward

AFGE, Local 17

